

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JAMES ORLEY MILLER, JR.

Plaintiff

V.

CIVIL ACTION NO. 5:15-cv-00819

**TRANSPORT DEPOT PRODUCE
AND DRY, INC., JULIO A. GALVEZ
AND LAZARO RODRIGUEZ**

Defendants

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants Transport Depot Produce and Dry, Inc., Julio A. Galvez and Lazaro Rodriguez (“Defendants”) respectfully remove the above-captioned action, presently pending in the 22nd District Court of Comal County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division. As grounds for removal to this Court, Defendants state as follows:

1. On July 27, 2015, Plaintiff James Orley Miller, Jr. (“Plaintiff”) commenced a civil action against Defendants for alleged personal injuries in the 22nd Judicial District Court, Comal County, Texas by filing his Original Petition bearing Cause No. C2015-1125A (“State Court Action”).

2. On August 20, 2015, Defendants Julio A. Galvez and Lazaro Rodriguez were served with a citation and a copy of Plaintiff's Original Petition. Defendants timely answered the State Court Action on September 14, 2015. Therefore, this Notice of Removal is being filed within thirty (30) days in accordance with 28 U.S.C. § 1446(b).

3. Plaintiff is an individual residing in Comal County, Texas. (Orig. Pet. at ¶ 2, Ex. A). For purposes of diversity jurisdiction, Plaintiff is a citizen of Texas.

4. Defendant Transport Depot Produce and Dry, Inc. was a corporation organized and existing under the laws of Florida with its principal place of business in Florida. For purposes of diversity jurisdiction, Transport Depot Produce and Dry, Inc. is a citizen of the State of Florida.

5. Defendant Julio A. Galvez is an individual residing in Miami-Dade County, Florida. For purposes of diversity jurisdiction, Defendant Julio A. Galvez is a citizen of the State of Florida.

6. Defendant Lazaro Rodriguez is an individual residing in Miami-Dade County, Florida. For purposes of diversity jurisdiction, Defendant Lazaro Rodriguez is a citizen of the State of Florida.

7. Complete diversity of citizenship exists between the parties to this action pursuant to and in accordance with the requirements of 28 U.S.C. § 1332, which confers original subject matter jurisdiction upon this Court.

8. The amount in controversy in this matter exceeds \$75,000.00, as required for diversity jurisdiction under 28 U.S.C. § 1332. In his Original Petition, although Plaintiff does not specify an amount he seeks in recovery, it does demonstrate on its face that the amount in controversy is greater than \$75,000.00. Specifically, Plaintiff maintains he suffered severe bodily injuries to his head, neck, back, shoulders and other parts of his body generally. (Orig. Pet. at ¶ 26). Plaintiff further maintains that such injuries have had a serious effect on his health and wellbeing, which are likely to affect him for his entire life. *See id.* He further alleges his injuries have caused his physical and mental condition to deteriorate and he will likely suffer

consequences and deterioration throughout his body for a long time in the future, if not for the balance of his natural life. *See id.* Plaintiff seeks recovery for medical care and expenses, physical pain and suffering, physical impairment, lost wages, and mental anguish, all in the past and future. (Orig. Pet. at ¶27). He also seeks recovery for disfigurement, as well as exemplary damages. (Orig. Pet. at ¶27-32).

9. At the time of filing of this Removal, this matter was pending in Comal County, Texas. Accordingly, the San Antonio Division of the Western District of Texas is the proper district and division for the removal of this matter. *See* 28 U.S.C. § 1446(a).

10. All Defendants consent to the removal of this case to federal court and all are currently represented by the undersigned counsel.

11. Promptly after filing this Notice of Removal, Defendants will give written notice to Plaintiff and file a copy of the Notice of Removal with the Clerk of Court of the 22nd Judicial District Court, Comal County, Texas, as required by 28 U.S.C. § 1446(d).

12. Copies of the documents required to be filed with this Notice of Removal are attached hereto as Exhibits A – D.

WHEREFORE, Defendants respectfully pray this case be removed to the United States District Court for the Western District of Texas, San Antonio Division, and for any further relief this Court deems just and appropriate.

Dated: September 17, 2015

Respectfully submitted,

dc&m | **Davis, Cedillo & Mendoza, INC.**
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DRY, INC., JULIO A. GALVEZ AND
LAZARO RODIGUEZ

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the clerk of the court using the CM/ECF system. Pursuant to Fed. R. Civ. P. 5(a)-(d), all counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by mail, United States Postal Service, on this 17th day of September, 2015.

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